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16 April 2002

BILL

To provide for the setting of financial reporting standards; to provide for the establishment and functions of the Financial Reporting Standards Council; to provide for the supervision and enforcement of compliance with the financial reporting standards; to amend the Companies Act, 1973, so as to provide for the preparation of the financial statements of companies in conformity with the financial reporting standards set under this Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:-

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CHAPTER I

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise –
 - “**board**” means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
 - “**board of appeal**” means the board of appeal established by section 26 of the Financial Services Board Act, 1990;
 - “**council**” means the Financial Reporting Standards Council established by section 2;
 - “**enforcement committee**” means the enforcement committee referred to in section 16;
 - “**entity**” includes a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973), and any other body, whether a corporate body or not, which is required by an act to present financial statements to a user of financial statements;
 - “**executive officer**” means the executive officer or a deputy executive officer appointed in terms of section 13 of the Financial Services Board Act, 1990;
 - “**financial reporting standards**” means the general purpose financial reporting standards and limited purpose financial reporting standards set under section 4;

“financial statements” means financial statements of an entity as contemplated in the financial reporting standards;

“general purpose financial reporting standards” means the financial reporting standards set for the preparation and presentation of the financial statements of an entity where –

- (a) any users of the financial statements of the entity have to rely mainly or solely on those financial statements for financial information regarding the entity; or
- (b) the entity receives deposits or loans from members of the general public or where the securities of the entity are issued to members of the general public;

“investigation committee” means the investigation committee referred to in section 13;

“limited purpose financial reporting standards” means the financial reporting standards set for the preparation and presentation of financial statements of an entity where –

- (a) there are no users of those financial statements of a class as contemplated in paragraph (a) of the definition of “general purpose financial reporting standards”; or
- (b) users of those financial statements as contemplated in paragraph (a) of the definition of “general purpose financial reporting standards” have waived, in accordance with an act, their right to receive general purpose financial statements

from that entity and have consented to the issuing to them of limited purpose financial statements,

and the entity does not receive deposits or loans from members of the general public and the securities of the entity are not issued to members of the general public;

“user of financial statements” means a person who in terms of any act is entitled to receive the financial statements of an entity.

CHAPTER II

SETTING OF FINANCIAL REPORTING STANDARDS

Establishment of council

2. There is hereby established a body corporate to be known as the Financial Reporting Standards Council that must perform its functions in accordance with this Act.

Composition of council

3. (1) The board must, on the date that this Act comes into operation appoint as members of the council –
 - (a) the executive officer; and
 - (b) subject to subsection (2), nine additional individuals, consisting of –
 - (i) two users of financial statements in the private sector;

- (ii) two users of financial statements who in terms of any act perform regulatory or supervisory functions or any other functions of a governmental authority in respect of entities;
 - (iii) two preparers of financial statements who are responsible for the preparation and presentation of financial statements by or on behalf of entities; and
 - (iv) three auditors of financial statements.
- (2) As soon as limited purpose financial reporting standards have been set by the council under section 4 (b), the board must appoint as members of the council one user (in the private sector) and one preparer of the financial statements of an entity that prepares financial statements in conformity with limited purpose financial reporting standards.
- (3) The council is independent and every member of the council must perform his or her functions independently and impartially despite his or her appointment in one of the categories listed in subsection (1).
- (4) Before appointing the members of the council referred to in subsection (1)(b) the board must publish in the national media and in the *Gazette* a call for nominations of candidates who, considering the functions of the council set out in section 4, have suitable qualifications, knowledge and experience.
- (5) The council must appoint from its members a chairperson and deputy

chairperson who must perform the function of chairperson when the office of chairperson is vacant or the chairperson is unable to fulfil his or her duties.

- (6) The board must appoint an alternate member in respect of each member of the council.
- (7) An individual may not be a member of the council if that individual –
 - (a) is an unrehabilitated insolvent;
 - (b) is subject to a court order holding that individual to be mentally unfit or disordered; or
 - (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine.

Functions of council

- 4. The council –
 - (a) must set general purpose financial reporting standards laying down the minimum requirements for recognition, measurement, presentation and disclosure in the financial statements of entities that are required in terms of any act to comply with general purpose financial reporting standards;
 - (b) must set limited purpose financial reporting standards laying down the minimum requirements for recognition, measurement, presentation and disclosure in the financial statements of entities that are required in terms of any act to comply with limited purpose financial reporting standards.

Term of office of members of council and filling of vacancies

5. (1) When the first members of the council are appointed in terms of –
- (a) section 3(1)(b), five members must be appointed for a period of five years, and the other four for a period of three years;
 - (b) section 3(2), one member must be appointed for a period of five years, and the other one for a period of three years, after which all appointments to the council must be for a period not exceeding five years.
- (2) The board may re-appoint a member of the council at the expiry of that member's term of office, but no person may be appointed to the office of chairperson of the council for more than two consecutive terms.
- (3) (a) The chairperson and any other member of the council may resign from the council by giving not less than one month's written notice to the board.
- (b) The chairperson may remain a member of the council after his or her resignation as chairperson.
- (4) The board -
- (a) must remove the chairperson or a member of the council from office if that person -
 - (i) becomes disqualified as contemplated in section 3(5) or permanently incapacitated;

- (ii) has been absent without the chairperson's leave from three consecutive meetings of the council; or
 - (iii) has ceased to be a user, preparer or auditor, as the case may be, of financial statements as contemplated in section 3(1)(b) and (2);
- (b) may remove the chairperson or a member of the council from office for -
 - (i) serious misconduct; or
 - (ii) engaging in any activity that may undermine the integrity of the council.
- (5) A vacancy on the council arising from a circumstance referred to in subsections (3) and (4) or from the death of a member, must be filled in accordance with section 3 and a member so appointed must hold office for the unexpired portion of the period for which the vacating member was appointed.

Meetings of council

- 6. (1) The meetings of the council are held at such times and places as the chairperson of the council may determine, but four members of the council may by notice in writing to the chairperson demand that a meeting of the council be held within seven business days of such notice.
- (2) The council must determine its own procedure for meetings of the council.

- (3) All members of the council have one vote in respect of matters considered by the council, but alternate members only have a vote in the absence from a meeting of the member whom the alternate is representing.
- (4) The decision of eight members (six if no appointment of members under section 3(2) has been made) of the council at any meeting at which there are not less than nine members (seven if no appointment of members under section 3(2) has been made) present constitutes the decision of the council.
- (5) No proceedings of the council are invalid by reason only of the fact that a vacancy existed on the council or that any member was not present during such proceedings or any part thereof.

Staff of council

7. The board must appoint the staff of the council or obtain by agreement the specific services of any person, including any state department, functionary or institution, to assist the council in performing its functions.

Committees of council

8. (1) The council may appoint –
 - (a) a committee for the purpose of developing, subject to the instructions of the council, general purpose financial reporting standards; and

- (b) a committee for the purpose of developing, subject to the instructions of the council, limited purpose financial reporting standards.
- (2) Each committee referred to in subsection (1) consists of so many members of the council or so many other persons or so many members and other persons as the council considers necessary and the council may at any time dissolve or reconstitute a committee.
- (3) The council must designate a member of each committee as chairperson thereof.

Remuneration of members of council and its committees and staff of council

9. (1) The board pays to a member of the council and a member of a committee of the council who is not in the full-time employment of the State or the board the -
- (a) remuneration or allowances determined by the board; and
 - (b) reimbursement of expenses incurred in the performance of the member's duties.
- (2) The board may pay the staff of the council such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market.

Powers of board with regard to council

- 10.** (1) The board may do all that is necessary or expedient for the council to perform its functions effectively, which includes the power to –
- (a) acquire or dispose of any right in or to property;
 - (b) open and operate a bank account in the name of the council, subject to the Public Finance Management Act, 1999 (Act No.1 of 1999);
 - (c) insure the council against any loss, damage, risk or liability; and
 - (d) perform legal acts, or institute or defend any legal action, in the council's name.
- (2) The board may, subject to such conditions as it may determine, delegate its powers referred to in section 7 and subsection (1) to the council.

Approval and publication of financial reporting standards

- 11.** (1) In this section “proposed financial reporting standards” includes any amendment of the financial reporting standards.
- (2) The committees of the council must give notice in two national newspapers and the Gazette of proposed financial reporting standards. The notice must -
- (a) state the place where or the manner in which the proposed financial reporting standards may be inspected by members of the public;

- (b) call upon all interested persons who have any objections thereto, to lodge their objections with the committee within a period of 60 days from the date of publication of the notice.
- (3) The committees of the council must, on expiration of the period referred to in subsection (2), submit the proposed financial reporting standards and any objections received to the council.
- (4) The council must consider the proposed financial reporting standards and objections, if any, and approve the proposed financial reporting standards with or without amendment.
- (5) The council must publish the proposed financial reporting standards so approved in the *Gazette*.
- (6) In determining whether a proposed financial reporting standard should be approved with or without amendment, the council must be satisfied that compliance with the proposed financial reporting standards will constitute compliance with the International Financial Reporting Standards of the International Accounting Standards Board.

CHAPTER III

SUPERVISION AND ENFORCEMENT OF COMPLIANCE WITH FINANCIAL REPORTING STANDARDS

Application of chapter

12. (1) The executive officer must designate by notice in the *Gazette* those

classes of entity to which this chapter applies.

- (2) In performing his or her function in terms of subsection (1), the executive officer must consider whether the supervision and enforcement of compliance with the financial reporting standards by a class of entity –
- (a) will serve the public interest; and
 - (b) are desirable for the protection of any users of financial statements of an entity where the opportunity of such users to acquire financial information regarding that entity is restricted to the financial statements of the entity.

Establishment and functions of investigation committee

- 13.** (1) The board must establish an investigation committee and appoint as members thereof so many suitably qualified and experienced persons as the board may consider necessary.
- (2) The investigation committee, with the assistance of employees of the board designated by the executive officer, may –
- (a) at any time conduct an investigation to determine whether an entity complies with the financial reporting standards;
 - (b) investigate any failure to comply with the financial reporting standards;
 - (c) in writing direct any person, including an accountant, auditor and member of the controlling body of an entity, who is believed to be able to furnish information on the subject of

any investigation or to have in such person's possession or under such person's control any book or document which has a bearing upon that subject, to –

- (i) deliver or produce such book or document to the investigation committee; or
- (ii) appear before the investigation committee to be interrogated,
at a time and place specified.

(3) A person referred to in subsection (2)(c) must –

- (a) produce a book or document required by the investigation committee; or
- (b) answer each question put to him or her by the investigation committee truthfully and to the best of that person's ability, even though he or she is of the opinion that such book, document, or answer contains confidential information of his or her client.

(4) (a) If a person is interrogated in terms of subsection (2) and is obliged to answer questions which may incriminate him or her or, if he or she is to be tried on a criminal charge, may prejudice him or her at such trial, no information regarding such questions and answers may be published in any manner.

- (b) No evidence regarding any questions and answers

contemplated in paragraph (a) is admissible in any criminal proceedings, except in criminal proceedings for perjury.

- (5) The law relating to privilege as applicable to a witness summoned to produce a book or document or to give evidence in a court of law, applies to the production of a book or document or an interrogation under subsection (2).
- (6) The board may refer a failure by a person to comply with a direction issued under subsection (2)(c), or with subsection (3), to the enforcement committee to be dealt with in terms of the powers of that committee.
- (7) The proceedings of the investigation committee are confidential but information about such proceedings may be disclosed to the board and the enforcement committee or to a court that requires disclosure.

Powers of board after investigation

- 14. (1) If an investigation done under section 13 reveals evidence of a failure to comply with the financial reporting standards, the board may direct the person or body ultimately responsible for the management and direction of the entity in question to take any steps, or to refrain from doing or continuing to do any act, in order to terminate or remedy any non-compliance with the financial reporting standards within the time specified by the board.
- (2) If an entity fails to comply with a direction issued under subsection

- (1), the board may refer the matter to the enforcement committee.
- (3) Subsections (1) and (2) do not preclude the board to issue a direction under subsection (1) and in addition to refer the matter to the enforcement committee.
- (4) The board must make public a direction issued under subsection (1), unless there are exceptional circumstances that justify the preservation of the confidentiality of the direction.

Delegation of powers

15. The board may, subject to such conditions as it may determine, delegate its powers referred to in sections 13(1) and (6) and 14 to the executive officer.

Establishment of enforcement committee

16. The board must establish an enforcement committee which –
- (a) is a committee of record; and
 - (b) must perform its functions in accordance with this Act.

Composition of enforcement committee

17. (1) The board must appoint as members of the enforcement committee so many persons as the board may consider necessary: Provided that a minimum of two members are persons qualified in law and one member qualified in financial reporting.
- (2) The enforcement committee may, as the need arises and on an *ad hoc* basis, co-opt one or more persons with appropriate knowledge and experience as additional members of the enforcement committee.

- (3) No member of the enforcement committee who was involved in the investigation of a matter may participate in a decision on that matter by the enforcement committee.
- (4) The board must designate from the members of the enforcement committee a chairperson and a deputy chairperson who performs the functions of the chairperson when the office of chairperson is vacant or when the chairperson is unable to perform his or her functions.
- (5) The board may at any time reconstitute the enforcement committee but a reconstitution may not affect the membership of a panel referred to in section 19 during the course of proceedings before such panel.

Functions of enforcement committee

18. When the board refers a matter to the enforcement committee under section 13(6) or 14 the enforcement committee must deal with the matter in accordance with sections 21 to 24.

Enforcement committee proceedings

19. (1) The chairperson of the enforcement committee, with the assistance of employees of the board designated by the executive officer, is responsible for managing the caseload of the enforcement committee and must assign each matter referred to the enforcement committee to a panel composed of the chairperson or deputy chairperson and not less than two members of the enforcement committee.
- (2) A panel determines its own procedure for the performance of its functions.

- (3) The decision of a panel on a matter assigned to it must be in writing and include reasons for the decision.
- (4) A decision of a majority of the members of a panel is the decision of the enforcement committee.

Withdrawal of referral of matter

- 20.** The board may at any time withdraw a matter referred to the enforcement committee.

Consideration of matter by enforcement committee

- 21.** (1) If the board refers a matter to the enforcement committee, the referral must be accompanied by a report on the investigation referred to in section 13, or the failure referred to in section 13(6), and all other evidence relevant to the matter and in the possession of the board.
- (2) The enforcement committee must serve a copy of the report and evidence referred to in subsection (1), together with particulars of the alleged failure, on the entity or person (who may include an accountant, auditor and member of the controlling body of an entity) charged with the failure (hereinafter referred to as the respondent) and direct it to respond thereto by way of affidavit within a time specified by the enforcement committee.
- (3) The panel to which a specific matter has been assigned must consider, subject to subsection (4), the documentary evidence before it without hearing further evidence.
- (4) The panel may, in exceptional circumstances and when it is necessary

to come to a just decision, by written notice summon a person to appear before the panel to be questioned or to produce a document specified in the summons.

- (5) A legal representative may assist a person summoned in terms of subsection (4) at such person's own expense.

Admission by respondent

- 22.** (1) If a respondent admits that it has committed the failure of which it is charged, and the panel and the respondent agree on the appropriate amount of an administrative penalty, the panel may –
- (a) impose that penalty; and
 - (b) if necessary, direct the respondent to take any remedial action as contemplated in section 14(1),
- and the respondent must pay the penalty to the board and take the remedial action within the time specified by the panel.
- (2) If the respondent fails to pay within the specified time the penalty agreed upon in terms of subsection (1), the board may file with the clerk or registrar of any competent court a statement certified as correct, stating the amount of the penalty imposed on the respondent, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board.

Imposition of administrative penalty

- 23.** (1) If a panel is satisfied that a respondent has failed to comply with the financial reporting standards, or has committed the failure referred to in

section 13(6) and –

(a) the respondent did not admit failure as contemplated in section 22; or

(b) if the panel and the respondent could not agree on the appropriate amount of a penalty in terms of that section,

the enforcement committee may cause to be delivered by hand to that respondent a written notice that must contain the particulars contemplated in subsection (2).

(2) A notice referred to in subsection (1) must -

(a) specify the name and address of the respondent;

(b) specify the particulars of the failure;

(c) set out the reasons for the panel's decision to impose an administrative penalty;

(d) specify the amount of the administrative penalty which the panel considers appropriate in the circumstances and may, if necessary, contain a direction to the respondent to take any remedial action as contemplated in section 14(1);

(e) inform the respondent that, not later than 30 days after the date of the notice referred to in subsection (1) the respondent may –

(i) pay the administrative penalty and take the required remedial action, if such a direction was issued; or

(ii) appeal in terms of section 26 against the imposition of the administrative penalty and the direction to take

remedial action, if such a direction was issued, to the board of appeal; and

- (f) state that a failure to comply with the requirements of the notice within the time permitted, will result in the actions contemplated in subsection (3).
- (3) If the respondent fails to comply with the requirements of a notice referred to in subsection (2), the board may file with the clerk or registrar of any competent court a statement certified as correct, stating the amount of the administrative penalty imposed on the respondent, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board.
- (4) When determining an appropriate administrative penalty a panel must consider the following factors:

 - (a) The nature, duration, seriousness and extent of the failure;
 - (b) the extent to which the failure was deliberate or reckless;
 - (c) any loss or damage suffered as a result of the failure;
 - (d) the impact of the failure on the financial statements of an entity and its probable influence on the economic decisions of users of those financial statements;
 - (e) whether the respondent has failed to comply with a direction of the board under section 14(1) or the panel under section 22(1);
 - (f) whether the respondent has previously failed to comply with the financial reporting standards;

- (g) any other factor that the panel considers relevant.

Costs

24. A panel may make such an order for the payment of the costs of the proceedings of the enforcement committee as it may consider fair in the circumstances of each case.

Confidentiality

25. (1) Subject to subsection (2), no member of the enforcement committee or employee of the board may disclose to any person, except for the purposes of the performance of functions in terms of this Act or when required to do so before a court, any information acquired in the performance of functions and relating to the proceedings or a decision of the enforcement committee.
- (2) If a respondent does not appeal against a decision of the enforcement committee within the period specified in section 23(2)(e), the executive officer must make public the decision of the enforcement committee, unless there are exceptional circumstances that justify the preservation of the confidentiality of the decision.

Appeal

26. (1) A person aggrieved by a decision or direction of the board or the investigation committee under a power conferred or a duty imposed upon the board or the investigation committee by or under this Act, may appeal to the board of appeal.

- (2) An appeal in terms of section 23(2)(e) and subsection (1) must be noted on the conditions determined by or under section 26 of the Financial Services Board Act, 1990.
- (3) The board of appeal must conduct its hearings in public.
- (4) The executive officer must act as the respondent in such an appeal.
- (5) In deciding an appeal the board of appeal must take into account –
 - (a) the reasons for the decision appealed against;
 - (b) the grounds of appeal;
 - (c) the documentary or verbal evidence submitted or given by any person at the request or with the permission of the board of appeal; and
 - (d) any other information at the disposal of the board of appeal.
- (6) The board of appeal must within a reasonable time –
 - (a) confirm, amend or set aside the decision appealed against; and
 - (b) make such award as to costs as it may consider appropriate.
- (7)
 - (a) The decision of the board of appeal is binding on the parties to the appeal.
 - (b) This Act may not be construed so as to limit the right of any interested person to have a decision of the board of appeal reviewed by a court of competent jurisdiction, subject to the obligation on such person to have first exhausted his or her remedies in terms of this Act.

CHAPTER IV

GENERAL MATTERS

Financing of council and board

- 27.** (1) The costs of performing the functions of the council and its committees and those of the board, the investigation committee and enforcement committee, must be paid out of a levy that the board may impose by notice in the *Gazette* on entities.
- (2) Before imposing the levy, the board must publish the proposed levy in any appropriate manner to entities together with an invitation to make representations to the board about the proposed levy within a specified time.
- (3) The board must consider any representations made in pursuance of the invitation referred to in subsection (2).
- (4) The notice referred to in subsection (1) must state –
- (a) the amount of the levy and the manner of calculation and payment thereof;
 - (b) the period for which the levy is imposed and the date on which or the period within which it must be paid; and
 - (c) the rate of interest payable on outstanding levies.
- (5) The board may impose different levies in respect of different categories and different sub-categories of entities and according to whether or not

an entity's compliance with financial reporting standards is supervised and enforced in terms of Chapter II.

- (6) A levy imposed, and interest owed in respect thereof, is a debt due to the board and may be recovered by the board in a competent court.
- (7) The board may on application by an entity and if the board is convinced that there are sound reasons therefor, grant exemption to that entity from the obligation to pay a levy to the extent and subject to the conditions determined by the board.

Limitation of liability

28. The council or any committee thereof, the board, the investigation committee, the enforcement committee or any member, officer or employee of those bodies, is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the council, committee of the council, board, investigation committee, enforcement committee, member, officer or employee in the *bona fide* or negligent, but not grossly negligent, performance of any function under or in terms of this Act.

Transitional provisions

29. (1) All Statements of Generally Accepted Accounting Practice issued by the Accounting Practices Board and which are in terms of any act applicable to the preparation and presentation of the financial statements of an entity immediately before the commencement date of this Act, continues to be so applicable as if set, approved

and published under this Act as general purpose financial reporting standards.

- (2) Until limited purpose financial reporting standards are set under this Act, entities that must comply with limited purpose financial reporting standards in terms of any act, must comply with the general purpose financial reporting standards.

Amendment of Companies Act

30. This Act amends the Companies Act, 1973, as set out in the Schedule.

Short title and commencement

31. This Act is called the Financial Reporting Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

- “(a) such components as are required by the financial reporting standards laid down by the Financial Reporting Standards Council under section 4(a) or (b), as the case may be, of the Financial Reporting Act, 2002 (Act No. ... of 2002);”;
- (c) by the deletion of paragraphs (b) and (bA) of subsection (2);
- (d) by the substitution for subsection (3) of the following subsection:
- “(3) The annual financial statements or consolidated annual financial statements required to be made out by a company in terms of subsection (1) shall be prepared in conformity with -
- (a) the general purpose financial reporting standards laid down by the Financial Reporting Standards Council under section 4 (a) of the Financial Reporting Act, 2002 (Act No. ... of 2002); and
- (b) all other relevant requirements of this Act:
- Provided that a private company, if authorised annually by a resolution passed by all its members at a general meeting of the private company or in a document signed by all of its members, may prepare annual financial statements and consolidated annual financial statements conforming to –
- (i) the limited purpose financial reporting standards laid down by the Financial Reporting Standards Council under section 4 (b) of the

Financial Reporting Act, 2002 (Act. No. ... of 2002); and

(ii) all other relevant requirements of this Act.”;

and

(e) by the insertion after subsection (3) of the following subsection:

“(3A) Any financial statements or reports (including interim reports, provisional financial statements, preliminary announcements of results, circulars and prospectuses) other than annual financial statements issued by a company shall comply with the financial reporting standards laid down by the Financial Reporting Standards Council under section 4(a) or (b), as the case may be, of the Financial Reporting Act, 2002 (Act No. ... of 2002

Deletion of section 288 of Act 61 of 1973, as substituted by section 13 of Act 76 of 1974 and amended by section 24 of Act 111 of 1976

2. Section 288 of the principal Act is deleted.

Deletion of section 289 of Act 61 of 1973, as amended by section 12 of Act 82 of 1992

3. Section 289 of the principal Act is deleted.

Deletion of section 290 of Act 61 of 1973, as substituted by section 14 of Act 76 of 1974

4. Section 290 of the principal Act is deleted.

Deletion of section 291 of Act 61 of 1973, as amended by section 15 of Act 76 of 1974

5. Section 291 of the principal Act is deleted.

Deletion of section 293 of Act 61 of 1973, as substituted by section 17 of Act 76 of 1974

6. Section 293 of the principal Act is deleted.

Deletion of section 294 of Act 61 of 1973, as substituted by section 18 of Act 76 of 1974

7. Section 294 of the principal Act is deleted.

Amendment of section 298 of Act 61 of 1973, as substituted by section 20 of Act 76 of 1974

8. The following section is substituted for section 298 of the principal Act:

“Approval and signing of financial statements

298. (1) The annual financial statements and consolidated annual financial statements (if any) of a company other than the auditor’s report, shall be approved by its directors and signed on its behalf by two of the directors or, if there is only one director, by that director **[and group annual financial statements shall similarly be approved and signed by the directors of the holding company].**

(2) If a copy of any annual financial statements, or **[group]** consolidated annual financial statements, which have not been approved and signed as required by subsection (1), is

issued, circulated or published, every director or officer of the company concerned who is a party to such issue, circulation or publication thereof, shall be guilty of an offence.”.

Amendment of section 300 of Act 61 of 1973, as amended by section 21 of Act 76 of 1974, section 10 of Act 31 of 1986 and section 13 of Act 82 of 1992

9. Section 300 of the principal Act is amended –

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) to examine the annual financial statements and **[group]** consolidated annual financial statements to be laid before its annual general meeting;”;

(b) by the deletion of paragraph (h); and

(c) by the substitution for paragraph (i) of the following paragraph:

“(i) to examine such of the accounting records of the company and carry out such tests in respect of such records and such other auditing procedures as he considers necessary in order to satisfy himself that the annual financial statements or **[group]** consolidated annual financial statements **[fairly present the financial position of the company or of the company and its subsidiaries and the results of its operations and those of its subsidiaries, in conformity with generally accepted accounting practice applied on**

a basis consistent with that of the preceding year]
comply with section 286(3);”.

Amendment of section 301 of Act 61 of 1973, as amended by section 22 of Act 76 of 1974

10. Section 301 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) When the auditor of a company has complied with the requirements of, and has satisfied himself as to the matters stated in, section 300, and has carried out his audit free of any restrictions whatsoever, he shall make a report to the members of the company to the effect that he has examined the annual financial statements and **[group]** consolidated annual financial statements and that in his opinion they fairly present the financial position of the company and its subsidiaries and the result of its operations and that of its subsidiaries in the manner required by this Act.”.

Amendment of section 302 of Act 61 of 1973, as amended by section 23 of Act 76 of 1974

11. Section 302 of the principal Act is amended by the substitution for subsections (1) and (4) of the following subsections:

“(1) A copy of the annual financial statements of a company and the **[group]** consolidated annual financial statements, if any, shall not less than twenty-one days before the date of the annual general meeting of the company be sent to every member of the company

and every holder of debentures of the company (whether or not such holder of debentures is entitled to receive notices of general meetings of the company) and to all persons other than members or holders of debentures of the company who are entitled to receive such notices.

- (4) A public company shall on the day on which it sends such copies to its members as provided in subsection (1), send to the Registrar under cover of the prescribed form a copy, certified to be a true copy by a director and the secretary of the company –
- (a) of the annual financial statements and **[group]** consolidated annual financial statements, if any; and
 - (b) of the annual financial statements of every private company which is a subsidiary of that public company.”.

Deletion of section 307 of Act 61 of 1973, as amended by section 28 of Act 76 of 1974

12. Section 307 of the principal Act is deleted.

Amendment of section 309 of Act 61 of 1973, as amended by section 29 of Act 76 of 1974

13. Section 309 of the principal Act is amended by the substitution for subsection (1) of the following paragraph:

- “(1) Any member or holder of debentures of a company shall be entitled to be furnished on demand without charge with a copy of the last annual financial statements (including **[group]** consolidated annual

financial statements) and provisional annual financial statements and of the last interim report of the company.”.

Amendment of Schedule 4 of Act 61 of 1973, as amended by Proclamation No. R.13 of 1974, Proclamation No. R.19 of 1975, Proclamation No. 219 of 1976, Proclamation No. R.262 of 1977, section 106 of Act No. 82 of 1986 and substituted by Government Notice R. 2921 of 1992 with effect from 1 April 1993.

14. Schedule 4 of the principal Act is amended by the deletion of paragraphs 1 to 65 inclusive and paragraphs 73 to 79 inclusive.